UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Potomac-Appalachian Transmission Highline, L.L.C. — Docket No. ER08-386-000

(Issued March 3, 2008)

Attached is the statement by Commissioner Wellinghoff dissenting in part to an order issued on February 29, 2008, in the above-referenced proceeding. *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188 (2008).

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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WELLINGHOFF, Commissioner, *dissenting in part*:

I believe that PATH has demonstrated that its project warrants an incentive ROE adder. I disagree, however, with the majority's decision to grant PATH an ROE of 14.3 percent. I am concerned about the implications of the majority's approach to this issue, which carefully establishes a proxy group for purposes of a DCF analysis, but then brushes aside any consideration of the midpoint or median of the zone of reasonableness that results from that analysis in determining an overall ROE for PATH. I also believe that, despite its claim to the contrary, the majority has not appropriately adjusted that overall ROE to reflect the total package of incentives granted to PATH in this order.

Before detailing my concerns about the majority's actions, I would like to explain why I believe that an incentive ROE adder is warranted in this case.

In Order No. 679, the Commission stated that each applicant seeking transmission incentives must demonstrate that there is a "nexus between the incentive sought and the investment being made."[1] The Commission clarified in Order No. 679-A that the nexus requirement means that the incentives sought must be tailored to address the demonstrable risks and challenges faced by the applicant in undertaking the project.[2] The Commission also stated that the most compelling cases for incentive ROE adders are new projects that present special risks or challenges, not routine investments made in the ordinary course of expanding the system to provide safe and reliable transmission service.[3] Subsequently, in an order from which I dissented, the majority provided "further guidance" as to how it will distinguish between routine and non-routine investments for purposes of incentives applications, and it indicated that any project determined to be a non-routine investment automatically satisfies the nexus requirement.[4]

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[1] Order No. 679 at P 26.

[2] Order No. 679-A at P 21. In making this clarification, the Commission also stated that it retained its discretion to provide policy-based incentives. *Id*. n. 37.

[3] *Id*. P 23, 60.

[4] *Baltimore Gas and Elec. Co.*, 120 FERC ¶ 61,084 at P 50, 54 (2007).

I dissented from several recent orders in which I felt that the majority applied an insufficiently rigorous version of the nexus requirement and, therefore, inappropriately granted incentive ROE adders.[5] By contrast, I agree that the PATH project satisfies the nexus requirement. It is noteworthy, though not determinative, that the PATH project is, as described in this order, a backbone transmission facility that involves multiple entities and jurisdictions and that will relieve transmission constraints along a critical corridor.[6] More importantly, I believe that the PATH project is a non-routine investment worthy of an incentive ROE adder because it will use advanced technologies that will increase efficiency, enhance grid operations and reliability, and result in greater grid flexibility, thus benefiting all users of the grid and ultimate consumers.

PATH provides substantial detail on its proposed use of advanced technologies in its required technology statement and accompanying testimony.[7] For example, PATH Witness Michael Heyeck makes the following statement:

> PATH is committed to deploy a number of advanced technologies …. These technologies are: 1) advanced conductor design, including enhanced bundled conductor design, to lower line losses, reduce audible noise, and reduce radio and television interference, 2) phase and shield wire transposition to moderate system unbalances and further reduce line losses, 3) fiber-optic shield wires to enhance line protection and communications, 4) wide-area monitoring and control to include the installation of PMUs that will function as "stress detectors" and enable enhanced system controls, 5) remote station equipment diagnostics and security to enhance proper functioning of highly-specialized remote equipment, 6) independent phase operation (i.e., enhanced SPS) to enhance line reliability, 7) switchable shunt reactors to provide better flexibility for grid voltage control and to enable enhanced SPS, and 8) a large static var compensator with

[5] *See, e.g.*, *id*.; *Baltimore Gas and Elec. Co*., 121 FERC ¶ 61,167 (2007); *Commonwealth Edison Co*., 122 FERC ¶ 61,037 (2008).

[6] Less noteworthy is the fact that the PATH project is a baseline project in PJM's RTEP. I disagree with a finding that designation as an RTEP baseline project necessarily means that a project satisfies the nexus requirement.

[7] Order No. 679 at P 302 ("In as much as EPAct 2005 requires the Commission to encourage the deployment of transmission technologies, we will require applicants for incentive rate-treatment to provide a technology statement that describes what advanced technologies have been considered and, if those technologies are not to be employed or have not been employed, an explanation of why they were not deployed.").

> enhanced controls to increase line loadability and balance phase voltages.[8]

PATH estimates that its use of these advanced technologies on the proposed 765 kV and 500 kV lines will have substantial benefits. Witness Heyeck states that implementation of the PATH project will reduce system losses by 200 MW or more, resulting in energy savings of at least 600 GWh annually. Witness Heyeck further states that the present value of saving associated with these avoided losses equates to at least $700 million, and that an estimated 280,000 metric tons of carbon dioxide could be avoided annually.[9] In addition, Witness Heyeck discusses several special risks and challenges associated with using, and obtaining the benefits of, these advanced technologies.[10]

These are the type of incremental benefits from transmission investment to which the Commission should target incentive ROE adders. I commend PATH for considering such advanced technologies. I also would like to highlight Witness Heyeck's statements that although the exact specifications and implementation of these technologies are subject to final engineering, PATH is "committed to deploy these advanced technologies to achieve the full potential of the PATH Project" and is "committed to make this project a model of advanced technology to improve reliability and project efficiency that the Commission intended with Order No. 679-A."[11]

I am disappointed that the majority places so little emphasis on PATH's proposed use of advanced technologies. The majority acknowledges in a single paragraph that PATH intends to implement advanced technologies, but then states only that it "is not viewing PATH's incentives request as an advanced technology incentive request." For the reasons discussed above, I believe that the use of advanced technologies and their corresponding efficiency and reliability benefits deserve much greater consideration in the Commission's evaluation of requests for incentive ROE adders.

I believe that PATH has demonstrated that its project warrants an incentive ROE adder. In addition to the 50 basis point adder granted to PATH in today's order for its participation in PJM, I would grant PATH a 125 basis point incentive ROE adder. That adder would be consistent with the incentive ROE adder that the Commission recently granted to Southern California Edison Company for its Devers-Palo Verde II Project and its Tehachapi Transmission Project, which will use several advanced technologies similar

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[8] Exh. PTH-100 at 30.

[9] *Id*. at 32.

[10] *Id*. at 34-35.

[11] *Id*. at 30-31.

to those proposed for the PATH project.[12] As discussed below, that incentive ROE adder also would account appropriately for the other components of the incentives package granted to PATH in today's order.

After concluding that the PATH project warrants an incentive ROE adder, the task remains of determining an overall ROE for PATH. PATH seeks either an ROE at the high end of the zone of reasonableness or a 150 basis point adder (in addition to the 50 basis point adder for RTO participation) to result in an overall ROE of 14.3 percent. PATH supports its second alternative, in part, by providing a DCF analysis that identifies a range of reasonable returns from 7.9 percent to 16.7 percent, with a midpoint of 12.3 percent. Thus, PATH reaches its requested overall ROE of 14.3 percent by adding 200 basis points of incentive ROE adders to the midpoint from its DCF analysis.

This order concludes that the final proxy group that PATH proposes for its DCF analysis is unjust and unreasonable. In reaching that conclusion, the order cites several flaws in PATH's proposed proxy group: PATH did not sufficiently screen for risk because its proxy group includes various companies whose corporate credit ratings are not comparable; PATH has not sufficiently screened its proxy group for unsustainable growth rates; and PATH has excluded certain low-end utilities' returns inconsistent with the Commission's policy on electric utilities. This order corrects those flaws and establishes a proxy group with a zone of reasonableness from 6.7 percent to 16 percent.

The midpoint resulting from the corrected DCF analysis presented in this order is 11.35 percent, nearly 100 basis points below the midpoint of PATH's DCF analysis that is found to be based on an unjust and unreasonable final proxy group. However, in granting PATH's request for an ROE of 14.3 percent, the majority brushes aside that fact and, indeed, any consideration of the midpoint or median of the zone of reasonableness that results from the corrected DCF analysis. The majority's exceedingly limited rationale for that action consists of three statements. First, the majority finds to be moot protestors' concerns as to whether the midpoint or median of the zone of reasonableness should be used because the majority states that it is not granting a 150 basis point adder onto a midpoint or median return. Second, the majority makes the conclusory statement that the 14.3 percent ROE reflects the risks relating to the costs and time constraints of constructing the project. Third, the majority states, "[B]y nature of the overall ROE being within the high end of the zone of reasonableness, but not at the high end, we have adjusted the ROE to reflect the total package of incentives requested herein."

[12] *See Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007). Witness Heyeck compares the advanced technologies associated with SoCal Edison's projects and those that will be used for the PATH project. Exh. PTH-100 at 31-32.

I am concerned about the implications of the majority's approach to this issue. As the Commission stated in Order No. 679-A, the most compelling cases for incentive ROE adders are new projects that present special risks or challenges.[13] I believe that identifying special risks and challenges should involve a comparison to a baseline that reflects ordinary risks and challenges. In the context of a DCF analysis, the midpoint or median of the zone of reasonableness that results from a carefully established proxy group is an indicator of an ordinary level of risk.[14] By ignoring the midpoint or median of the corrected zone of reasonableness, I am concerned that the majority skips an important step in assessing the appropriate relationship between the incentive ROE adders to be granted to an applicant and that applicant's overall ROE. I do not believe that the majority resolves this problem with its conclusory statement that a 14.3 percent ROE reflects the risks relating to the costs and time constraints of constructing the project.

I am also concerned that, despite its claim to the contrary, the majority has not appropriately adjusted the overall ROE to reflect the total package of incentives granted to PATH in this order. In Order No. 679-A, the Commission stated that it would examine the total package of incentives sought by an applicant, the inter-relationship between any incentives, and how any requested incentives address the risks and challenges faced by the project.[15] The Commission also stated that if some of the incentives in a package reduce the risks of the project, then that fact would be taken into account in any request for an enhanced ROE.[16] I believe that the majority's actions in this order do not live up to these important pledges that we have made.

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[13] Order No. 679-A at P 23, 60.

[14] *See, e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,302 at P 10-11 (2004), *affirmed in relevant part, Pub. Serv. Comm'n of Kentucky v. FERC*, 397 F. 3d 1004 (D.C. Cir. 2005) (discussing relative advantages and drawbacks of median, average, and midpoint as measures of central tendency).

[15] Order No. 679-A at P 21.

[16] *Id*. P 6, 27.

As noted above, the midpoint resulting from the corrected DCF analysis presented in this order is 11.35 percent. Adding the incentive ROE adders that I discuss above to that midpoint, I would support an overall ROE for PATH of 13.1 percent.

For these reasons, I respectfully dissent in part from this order.

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Jon Wellinghoff
Commissioner